

REMARKS

By the above actions, the specification, abstract and claims 11-16, 19, 24, 30-32, 35, & 37-39 have been amended and claim 17 has been cancelled. Additionally, appended hereto is a replacement sheet of drawings on which Fig. 1 has been labeled "Prior Art." In view of the actions taken and the following remarks, reconsideration of this application is requested.

With regard to the objections raised by the Examiner, the abstract has been shortened so that it no longer exceed the 150 word maximum length, and the errors noted by the Examiner as being present on pages 9 & 12 have been corrected. Furthermore, all of the informalities noted by the Examiner in item 5 of his Action have been implemented as well. Therefore, all of the outstanding objections should now be withdrawn and such action is now requested.

The rejection of claim 17 under § 112 has been rendered moot by the cancellation thereof. As such, this rejection should be withdrawn.

Claims 11-39 have been rejected for indefiniteness under § 112. Each of the areas of indefiniteness noted by the Examiner has been addressed above. For example, the inconsistency noted by the Examiner with regard to the allocation control has been corrected so that it is now recited that allocation of the articles to make up the batches "in accordance with the calculated preference" instead of the historical frequency distribution. Additionally, the amendments to claim 12 now clearly further limit claim 11 with regard to the steps taken relative to those of the batches that are incomplete. Still further, claim 12 has been amended to define the "factor" as a "probability factor" to provide antecedent base for that term in those claims that are dependent from claim 12 while other of the claims that had been dependent upon claim 12 have been amended to depend from claim 11 instead. Also, the "corresponding probabilities" term has been removed from claim 14, "kinds" has been changed to --types-- in claims 30 and 31, and "mutually" has been deleted from claims 32. In view of all of the amendments, made, all of the claims should now be clear and definite so that it is requested that this rejection be withdrawn.

Claims 11, 16, 18, 25-26, 34, 38, and 39, were rejected, as best understood, based upon the Dalgaard patent application publication. However, it is assumed that this rejection must have resulted from the prior indefiniteness of the claims since the Dalgaard patent does not teach anything like the present invention. That is, Dalgaard teaches a modified accumulation method in which articles outside of an acceptable variation from an average

weight are used as the first article in each bin and then the remainder of the bin is filled based upon the number of articles of average weight needed to reach the target weight, instead of using the probability method of the present application which selects which batch to send each article to based on the probability of that article best contributing to achieving the target weight. The only thing statistical about Dalgaard's method is the determination of the average weight. No probability calculations of any kind are performed and especially there is no suggestion of any kind to perform any calculation which would determine preference for individual articles for use in completing specific batches. As such, the § 102 rejection should now be withdrawn.

As for the § 103 rejections based on the combination of the Dalgaard reference with either the Pearson patent or the Haze et al. patent. However, neither of these two additional references can make up for the shortcomings of the Dalgaard patent with reference to the present invention. The Pearson patent is a vision system for sorting of objects into two classes, i.e., stained (defective) nuts and unstained (usable) nuts. Such a system has no relevance to the formation of a plurality weighed articles into batches of a desired target weight and even if added to the Dalgaard's system to segregate incoming articles into two types of articles, it would not affect the basis upon which the batches are built up to the desired weight. The same is true for the combinational counting and weighing method of the Haze et al. patent which is designed to produce packages formed of a number of different articles. Haze et al. do not use probability calculations but rather calculates all of the possible combinations of a number of articles based on a number that the weight of an article has been converted and then selects the combination that comes closest to the target weight. This is a fundamentally different approach from that of the present invention that uses a historical distribution of article weights to calculate a preference for each individual article for a particular batch and then assigns that article to the batch for which it is the best match. Accordingly, no possible combination of the Dalgaard reference with either of the Pearson and Haze et al. patents could lead to the present invention so that withdrawal of the § 103 rejections based upon these references is in order and is respectfully requested.


With respect to the Examiner's reason for maintaining his election requirement, it is noted that the independent claims now recite the step of using the calculated preference so that his reason for maintaining his election no longer exists and the requirement should now be withdrawn as to groups 2 and 3.

The references that have been cited but not applied by the Examiner have been taken into consideration. However, since these references were not found to be relevant enough by the Examiner to apply against the original claims, no detailed comments thereon are believed to be warranted at this time.

Should this application be in condition for allowance but for the presence of nonelected claims or any other issues which could be addressed through discussions with the undersigned, then the Examiner is requested to contact the undersigned by telephone so that the further progress of this application might thereby be expedited.

Respectfully submitted,

By: \_\_\_\_\_



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